

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 6 March 2020 for the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020* [F2020L00233] to provide information about consultation in relation to the instrument.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education, Skills and Employment Measures No. 1) Regulations 2020*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on two initiatives that will be administered by the Department of Education, Skills and Employment.

Funding will be provided for:

- the Mid-Career Checkpoint program, which will assist eligible Australians who have taken time out of their career for caring responsibilities to re-enter the workforce and advance their careers (with funding of \$75 million available over four years, commencing from 2019-20); and
- the Online Resources and Professional Development for Mathematic Teachers program, which seeks to strengthen the capacity of school teachers across Australia to teach mathematics and numeracy through freely available, nationally coordinated and high quality professional teaching and learning resources (with funding of \$9.5 million available over four years, commencing from 2019-20).

Details of the Regulations are set out at Attachment A.

A Statement of Compatibility with Human Rights is at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Education, Skills and Employment.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on two activities that will be administered by the Department of Education, Skills and Employment (the department).

New **table item 396** establishes legislative authority for government spending on the Mid-Career Checkpoint program (the Checkpoint program).

The Checkpoint program is comprised of the following two components:

- *Stepping Back In*: for eligible participants who want to step back into work after two or more years out of the workforce as a result of caring for family members; and
- *Stepping Up*: for eligible participants who are already working and who have returned to the workforce for up to 18 months, and are now at a point where they are ready to advance their career.

Through *Stepping Back In*, carers will be able to access skills and employment assessment services and advice on re-entry into the workforce. It is expected that participants in the *Stepping Back In* component will be provided with an initial discussion to assess their needs. They will then be provided with career advice, including advice on professional development and specific longer-term skills training. They may also be provided with training in interview skills and computer skills.

Through *Stepping Up*, carers who have recently re-joined the workforce will be able to access advice on advancing or changing their career path. The *Stepping Up* component is expected to provide a series of discussions that cover assessment, advice and referrals, or a more flexible coaching arrangement.

The Checkpoint program is a key element of the Government's *Women's Economic Security Statement* of 20 November 2018.

It is proposed to pilot the Checkpoint program in 2019-20 before a full roll out in 2020-21. The Checkpoint program pilot will be a limited trial of six months to test the effectiveness of the proposed services to be delivered under the Checkpoint program, including:

- undertaking skills assessments, employment suitability and/or aptitude assessments;
- development and delivery of tailored skills assessment and career plans;
- group and individual mentoring; and
- promoting the Checkpoint program to eligible potential participants.

The department will undertake a limited tender process to procure third party service delivery for the Checkpoint program pilot, and an open procurement process to engage third party service providers to deliver the Checkpoint program nationally up until 2022-23.

The Checkpoint program aims to increase workforce participation and improve the earning potential of up to 40,000 carers returning to, or recently returned to, paid employment. The Checkpoint program is open to all working age eligible Australians and will, in particular, target women aged 30 to 45, supporting them to achieve economic security and to avoid the need to transition to income support.

Third party providers contracted to deliver the Checkpoint program will develop and deliver comprehensive marketing and communications strategies to engage with potential participants as part of the service delivery requirements.

Participants of the Checkpoint program will undertake a qualitative one-to-one assessment of their skills and employment goals with an employment specialist. Participants will have the option to undertake formal skills, employment suitability and/or aptitude assessments. Following the assessment process, participants will receive a highly customised plan that outlines their current skills, employment goals, and suggestions for training and/or activities to achieve their goals and to improve their competitiveness in the job market.

Participants will also have the opportunity to engage in coaching sessions focussed on developing relevant skills, for instance interview preparation, digital literacy or negotiating flexible working arrangements.

To be eligible to receive assistance under the Checkpoint program, participants must have been absent from the workforce for two or more years to undertake caring responsibilities.

Potential participants will be required to declare their compliance with the Checkpoint program eligibility criteria when applying to participate in the Checkpoint program. The eligibility criteria will be stated on the application form for the Checkpoint program.

The services delivered under the fully implemented Checkpoint program will be informed by the outcomes of the evaluation of the pilot. Evaluation of the pilot will occur concurrently with service delivery, enabling any necessary revisions to be implemented as they are identified.

The pilot will trial program services in New South Wales and Queensland, as set out below. Following an evaluation of the pilot, the Checkpoint program will deliver services in all states and territories.

Checkpoint Program Pilot

The Checkpoint program pilot will consist of a limited trial of six months to test the effectiveness of the proposed services to be delivered under the Checkpoint program (outlined above).

Third party service providers engaged to deliver program services will also be required to develop and deliver a comprehensive communication and marketing strategy to promote the Checkpoint program to eligible participants.

Other aspects of the pilot will be implemented as it progresses according to initial feedback and results.

The Checkpoint program pilot will be delivered in New South Wales and Queensland. These jurisdictions have been identified through the Australian Bureau of Statistics (ABS) Survey of Income and Housing (2015-16) data as having the largest (New South Wales: 32.5 percent) and third largest (Queensland : 17.6 percent) proportion of the total number of women of working age who do not study or work, and who do not receive any government support. In addition, ABS Data Regional Population Growth (2017-18) indicates that these jurisdictions have the second (Queensland: 50.9 percent) and fourth (New South Wales: 34.5 percent) largest proportions of population living outside of the jurisdiction's capital city.

Targeting the pilot to New South Wales and Queensland based on these two factors will enable the Checkpoint program to be tested on the greatest pool of potential participants while providing information on engagement strategies and potential participant interest in areas with different geographic classifications.

Pilot Evaluation

The department will conduct an internal evaluation of the pilot. The evaluation will consider the effectiveness and suitability of the services that have been delivered through analysis of qualitative customer satisfaction survey information and quantitative service reporting data. The evaluation will occur over the duration of the Checkpoint program pilot, and will enable a timely review of the Checkpoint program policy parameters prior to full delivery of the Checkpoint program.

Full Program Delivery

The Checkpoint program will be fully implemented in 2020-21 and will provide services to eligible Australians in all states and territories. It is expected that program services will be delivered in metropolitan and regional areas at a minimum. Delivery of program services to rural and remote regions will be dependent on the capacity of successful third party providers as determined through an open tender approach to market.

The services delivered under the fully implemented program will be informed by the outcome of the evaluation of the Checkpoint program pilot.

The department will conduct a limited tender process to engage a third party service delivery provider for the Checkpoint program pilot. Authority to conduct a limited tender is provided for under *Commonwealth Procurement Rule 10.3.g* which provides that one may be undertaken in circumstances "...when a relevant entity procures a prototype or a first good or service that is intended for limited trial or that is developed at the relevant entity's request in the course of, and for, a particular contract for research, experiment, study, or original development...".

This procurement will support a limited trial of six months to test the effectiveness of the proposed services to be delivered under the Checkpoint program including undertaking skills assessments, employment suitability and/or aptitude assessments, development and delivery of tailored skills assessment and career plans and group and individual mentoring. The pilot will also include promoting the Checkpoint program to eligible potential participants. Six Australian Apprenticeships Support Network (AASN) Providers who are already contracted by the Commonwealth to service these jurisdictions will be approached to tender to deliver the Checkpoint program pilot.

AASN Providers were assessed through a recent open procurement process and were found to represent value for money in delivering a significant Australian Government program. AASN Providers were assessed to have the capacity and capability to assist Australians navigate employment and skills development through the Australian Apprenticeship system. There is sufficient similarity in the services proposed through the Checkpoint program pilot to those delivered through the various stages of the AASN service delivery to extrapolate this demonstrated capacity and capability to deliver the Checkpoint program pilot.

Successful tenderers will be required to be competitive and represent best value for money consistent with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules 2019* (CPRs).

Should a tenderer be unsuccessful or have concerns about the outcome of a procurement decision, they will have the opportunity to make inquiries, complaints and request feedback from the department. Complaints and inquiries will be handled by the department in accordance with standard complaints handling processes and probity requirements.

It would be legally complex and impractical if a procurement decision had to be reconsidered and remade, especially where successful tenderers had already entered into contracts. This process could also result in unacceptable delays implementing the Checkpoint program pilot. Noting this and the existing complaints mechanism for applicants, it is not appropriate for a merits review process to be made available to unsuccessful tenderers.

The *Government Procurement (Judicial Review) Act 2018* (the Judicial Review Act) enables suppliers to challenge covered procurement processes (i.e. procurements to which Division 1 and 2 of the CPRs apply; and which are not otherwise included in a class of procurements determined under section 5(2) of the Judicial Review Act) for alleged breaches of certain procurement rules. This legislation could provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The procurement process for the full delivery of the Checkpoint program will be undertaken in accordance with applicable requirements under the PGPA Act, the CPRs, and the Department's Secretary Instructions, to ensure a robust and transparent procurement decision that provides value for money to the Commonwealth.

The decision on the successful tenderer will be made by a departmental official, the delegate of the Secretary of the department. Information on the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed. Should a tenderer be unsuccessful or have concerns about the outcome of a procurement decision, they will have the opportunity to make inquiries, complaints and request feedback from the department. Complaints and inquiries will be handled by the department in accordance with standard complaints handling processes and probity requirements.

It would be legally complex and impractical if a procurement decision had to be reconsidered and remade, especially where successful tenderers had already entered into contracts. This process could also result in unacceptable delays implementing the full Checkpoint program. Noting this and the existing complaints mechanism for applicants, it is not appropriate in the circumstances for a merits review process to be made available to unsuccessful tenderers.

The Judicial Review Act enables suppliers to challenge covered procurement processes (i.e. procurements to which Division 1 and 2 of the CPRs apply; and which are not otherwise included in a class of procurements specified by the Minister under section 5(2) of that Act) for alleged breaches of certain procurement rules. This legislation could provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

To be eligible to access services under the Checkpoint program, participants must be an Australian citizen or permanent resident who left paid employment for two or more years to undertake caring responsibilities. In addition, to access the *Stepping Up* entry point, participants must have returned to paid employment within 18 months as at the time of registration into the Checkpoint program.

It is anticipated that potential participants will be required to declare their compliance with these criteria at time of registration into the Checkpoint program. Third party providers will be required to confirm potential participants' understanding of the declaration of compliance they made and that they confirm its accuracy.

Where a potential client does not meet the eligibility criteria, the third party service provider will direct them to alternative services, where available, and provide their complaints handling policy, which will include escalation of issues to the department. Issues escalated to the department will initially be investigated by Checkpoint program staff. The Checkpoint program delegate retains the final decision making authority.

It should be noted that, carers in receipt of government payments such as parenting or unemployment benefits are not precluded from participating in the Checkpoint program, provided eligibility criteria are met. Participation in the Checkpoint program would also not be a compulsory requirement to receive an unemployment payment unless a ParentsNext participant has it included as a compulsory activity in their Participation Plan.

ParentsNext participants are generally required to undertake one compulsory activity in their Participation Plan as part of their participation requirements, which are a condition of receiving payment. If, when negotiating the contents of the Participation Plan with the parent, the ParentsNext provider entered the Checkpoint program as a compulsory activity, the parent could face temporary payment suspension for not participating. If they continually decided to not participate without reason, they could face financial penalties and/or payment cancellation.

All failures to meet participation requirements that lead to a determination to suspend payments, reduce payments or cancel a participation payment are subject to review on the merits and on questions of law, both within Services Australia and by appeal to the Administrative Appeals Tribunal.

ParentsNext participants may however, engage in the Checkpoint program outside of their participation requirements, as detailed in their Participation Plan without impacting their income support payments.

Currently, carers in receipt of the New Start allowance would be unaffected as the Checkpoint program would not meet the requirements of activities that are able to be included as a participation requirement for that payment. Future iterations of the JobActive program may vary this position.

Decisions about which participants will be eligible to participate in the Checkpoint program will not be subject to merits review. Given that selection for the Checkpoint program is based on eligibility criteria which do not allow for the exercise of a decision-maker's discretion, such decisions are not appropriate for merits review. Further, the Checkpoint program is one of a number of employment programs available, meaning that ineligible candidates can be redirected to other employment programs, so they would not be materially disadvantaged if ineligible to participate in the Checkpoint program.

The department will monitor service levels throughout the contract period and, within the remit of the policy approval, will consider contract variations or program design changes in the event it is necessary to manage extra demand for the Checkpoint program.

The department has consulted with internal and external stakeholders in the development of the Checkpoint program policy and scope of the program pilot. Internally, the department's Budget Strategy team has provided input and guidance on the timing requirements of the program pilot. The Apprenticeships and VET Participation team provided advice on service delivery, third party service provider contracting arrangements and program services, based on learnings from the Skills Checkpoint program. The Mutual Obligation and Compliance Policy team has provided guidance on interaction points between the program and recipients of income support.

Externally, the Department of the Prime Minister and Cabinet, through the Office for Women, has provided input into the program design with particular regard to its interaction with the Women's Economic Security Statement.

As a beneficial measure, individuals and businesses likely to be impacted were not consulted during the initial policy development phase. Rather, external consultation with third party service providers and program participants will occur during the program pilot and within one month of its conclusion to determine satisfaction with the program design and to inform policy refinements ahead of the full program implementation.

Funding of \$75 million was included in the 2019-20 Mid-Year Economic and Fiscal Outlook under the measure '*Election Commitment – Mid-Career Checkpoint - establishment*' for a period of four years commencing in 2019-20. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2019/20*, Appendix A: Policy decisions taken since the 2019 PEFO at page 210.

Noting that it is not a comprehensive statement of relevant Constitutional considerations, the objective of this item references the following powers of the Constitution:

- the power with respect to external affairs (section 51(xxix)), and
- the power with respect to the provision of unemployment benefits (section 51(xxiiiA)).

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's international obligations under treaties to which it is a party.

Australia has obligations relating to *the International Convention on Economic, Social and Cultural Rights [1976] ATS 5* (ICESCR), the Convention concerning Employment Policy (ILO Convention 122) and the Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142).

Article 2 of ICESCR provides that States Parties shall take steps 'to the maximum of its available resources' to realise the rights within ICESCR, including the right to work under Article 6(1). Article 6(2) sets out how State Parties shall realise this right, including through 'technical and vocational education programs'.

The Checkpoint program is intended to increase workforce participation and improve the earning potential of up to 40,000 carers returning to, or recently returned to, paid employment. By providing a range of services including skills and aptitude assessments, customised plans outlining employment goals and training (or activity) suggestions, coaching sessions on relevant employment-related skills such as digital literacy or interviewing skills, the Checkpoint program is designed to maximise available resources directed to achieve full realisation of the right to work.

Article 1(1) of ILO Convention 122 requires member States to pursue ‘an active policy designed to promote full, productive and freely chosen employment.’ These obligations are supplemented by Article 2, which provides that States ‘take such steps as may be needed, including when appropriate the establishment of programs’ to achieve the objectives of Article 1.

The Checkpoint program will provide a range of services that are directed towards promoting ‘full, productive and freely chosen employment’. These include providing a range of support services to assist people into employment, such as one-to-one assessments of skills and employment goals, the opportunity to undertake formal skills, employment suitability and/or aptitude assessments, guidance on creating employment goals and identifying necessary training (or activities) to assist in achieving these goals. Participants will also have the opportunity to engage in coaching sessions focussed on developing relevant skills, such as interview preparation, digital literacy or negotiating flexible working arrangements.

Article 1(1) of ILO Convention 142 obliges Members to ‘adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services’. Article 1(2)(a) requires that the policies and programs adopted for the purposes of Article 1(1) take due account of matters including ‘employment needs, opportunities and problems, both regional and national’.

Article 2 of the ILO Convention 142 obliges each Member to ‘establish and develop open, flexible and complementary systems of general, technical and vocational education.’

Article 3(1) provides that Members ‘gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults.’

Article 4 obliges each Member party to ‘gradually... extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout the life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility’.

The Checkpoint program promotes vocational guidance and vocational training, closely linked with employment through the provision of a range of support services designed to prepare participants for the workforce, or to improve their employment participation or outcomes. The services provided under the Checkpoint program are designed to be tailored to meet individual's needs and maximise people's opportunity to obtain employment. The Checkpoint program is designed to take into account a particularly vulnerable group, being persons who have been out of the workforce for a period of time due to caring responsibilities. The Checkpoint program intends to support this group to achieve economic security and find ongoing employment.

Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, allowances or services including unemployment benefits.

The Checkpoint program is open to all working age eligible Australians and is designed to support them to achieve economic security and avoid the need to transition to income support. Nevertheless, participants who are in receipt of government payments such as parenting or unemployment benefits may participate in the Checkpoint program, provided eligibility criteria are met. Participation in the Checkpoint program while not a compulsory requirement to receive an unemployment payment may, in the case of a ParentsNext participant be included as a compulsory activity in their Participation Plan.

New **table item 397** establishes legislative authority for government spending on the online resources and professional development for mathematics teachers program (the Online Mathematics program).

The Online Mathematics program will strengthen the capacity of school teachers across Australia to teach mathematics and numeracy through freely available, nationally coordinated and high quality professional teaching and learning resources.

The Online Mathematics program will include the following:

- the establishment of Mathematics Massive Open Online Courses (Mathematics MOOCs) for school teachers of Foundation to Year 10 students;
- face-to-face professional learning for school teachers of Foundation to Year 10 students in support of the Mathematics MOOCs;
- a repository of teaching and learning resources through an online Mathematics and Numeracy Hub.

The Mathematics MOOCs, which will build on the current Australian Government-funded Digital Technologies MOOCs, will support teachers of Foundation to Year 10 school students to develop teaching skills and knowledge relating to the *Australian Curriculum: Mathematics* and the *Numeracy general capability*. There will be a minimum of three self-paced and self-directed MOOCs: Foundation to Year 2; Years 3-6; and Years 7-10. Funding will be provided to one or more organisations to roll out the MOOCs nationally, raise awareness of the MOOCs, provide training in teaching Foundation to Year 10 mathematics, and provide ongoing support for participants. The Digital Technologies MOOCs have also developed an offline version for those in areas of low connectivity, which the Mathematics MOOCs would aim to replicate.

The Online Mathematics program will also enable the provision of face-to-face professional learning for school teachers in support of the Mathematics MOOCs. This model will use the successful combined delivery model currently in use for the Digital Technologies MOOCs and Digital Technologies Hub to deliver improvements in mathematics teacher capability across Australia. The effectiveness of the introduction of face-to-face professional learning in support of the Digital Technologies MOOCs has been well established, with a significant increase in course reach and completion since its introduction particularly those in regional, rural and remote regions.

The Online Mathematics program will also establish a repository of teaching and learning resources through an online Mathematics and Numeracy Hub. The Mathematics and Numeracy Hub will host high quality, curated education resources, including scope and sequence materials, to support the delivery of the *Australian Curriculum: Mathematics* and the *Numeracy general capability* for students from Foundation to Year 10. Resources will:

- include curated collections of existing evidence-based, curriculum-aligned mathematics and numeracy resources, as well as new resources that will be developed to address identified gaps; and
- cover multiple year levels (Foundation to Year 10) and all strands of the mathematics curriculum and numeracy general capability

The design and combined delivery of the Mathematics MOOCs and the Mathematics and Numeracy Hub, which will provide open access to free, high-quality, curriculum-aligned resources, will ensure maximum reach and engagement by schools across Australia. This will ensure that teachers and students from all backgrounds will be able to develop their mathematical and numeracy knowledge, skills and understanding. This includes cohorts that are traditionally under-represented in the Science, Technology, Engineering and Mathematics (STEM) fields, such as girls, students living in rural and remote locations, and Aboriginal and Torres Strait Islander students. This aligns with the *National STEM School Education Strategy 2016-2026*, which identifies the need to improve the capacity of teachers to teach mathematics and numeracy as an area for national action.

The providers for the Online Mathematics program will be selected through an open tender process. Information on this process, including outcomes, will be published on AusTender (www.tenders.gov.au). Final procurement decisions in relation to the Online Mathematics program will be made at the SES Band 2 level within the department.

Procurement decisions will be subject to the Commonwealth's resource management framework, including the PGPA Act and the CPRs.

The department will provide opportunity for tenderers to make inquiries and complaints should they wish to do so, and to provide feedback to unsuccessful tenderers. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with the probity processes for the procurement which will be made available on AusTender.

In accordance with usual practice, procurement decisions, once made, will be final and not subject to merits review. Re-making a procurement decision after entry into a contract with a successful proponent is legally complex, impractical, and would result in delays in implementation of the Online Mathematics program. This procurement will be subject to the Judicial Review Act and the review mechanisms specified under that Act.

Providers will be subject to contractual arrangements with the department, which govern the way providers must conduct the services.

No formal consultation was undertaken with persons likely to be affected by the Online Mathematics program.

The program is based on the successful Government funded, combined delivery model currently in use for the Digital Technologies MOOCs and Digital Technologies Hub. Teachers, school leaders and individuals using the Digital Technologies platforms and resources have provided positive feedback on this model. It includes learning experiences to encourage students, professional learning and engagement for teachers, and learning resources.

An Advisory Group will be established with relevant experts to support development of the online resources and mathematics MOOCs providing a mechanism for consultation with stakeholders including teachers during development and implementation of the program. In addition, the Online Mathematics Request for Tender specifies the following stakeholder consultation milestones for both its MOOCs and Hub components:

- a stakeholder engagement and communications plan;
- one or more face-to-face presentations/discussions of the project with stakeholders nominated by the department; and
- organising and participating in Advisory Group meetings twice a year or as required by the department with external stakeholders (which may be held face-to-face or by teleconference).

Funding of \$9.5 million was included in the 2019-20 Budget under the measure '*School Funding – initiatives to support students and teachers*' for a period of four years commencing in 2019-20. Details are set out in *Budget Paper No. 2: Budget Measures 2019-20*, Part 2: Expense Measures, at page 68.

Noting that it is not a comprehensive statement of relevant Constitutional considerations, the objective of the item references the communications power of the Constitution (section 51(v)).

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. The Online Mathematics program will involve the development of measures, such as the Mathematics MOOCs and the Mathematics and Numeracy Hub, which will operate on, or rely on, electronic communications services such as the internet. The face-to-face professional learning in support of the MOOCs is directed towards the delivery of material which is delivered online.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020* amend Schedule 1AB to the (FF(SP) Regulations to add two new table items to establish legislative authority for government spending on certain activities that are administered by the Department of Education, Skills and Employment.

This instrument adds the following table items to Part 4 of Schedule 1AB:

- **table item 396** for the Mid-Career Checkpoint program; and
- **table item 397** for the Online resources and professional development for mathematics teachers program.

Table item 396 – Mid-Career Checkpoint program

Table item 396 establishes legislative authority for government spending on the Mid-Career Checkpoint program (the Checkpoint program).

The Checkpoint program aims to increase workforce participation and improve the earning potential of up to 40,000 carers returning to, or recently returned to, paid employment. The Checkpoint program is open to all working aged eligible Australians and will target women aged 30 to 45 in particular, supporting them to achieve economic security and to avoid the need to transition to income support.

The Checkpoint program pilot participants will undertake a qualitative one-to-one assessment of their skills and employment goals with an employment specialist. Participants will have the option to undertake formal skills, employment suitability and/or aptitude assessments. Following the assessment process, participants will receive a highly customised plan that outlines their current skills, employment goals, and suggestions for training and/or activities to achieve their goals and to improve their competitiveness in the job market.

Participants will also have the opportunity to engage in coaching sessions focussed on developing relevant skills, for instance interview preparation, digital literacy or negotiating flexible working arrangements.

The services delivered under the fully implemented Checkpoint program will be informed by the outcome of the evaluation of the Checkpoint program pilot.

To be eligible to receive assistance under the Checkpoint program, participants must have been absent from the workforce for two or more years to undertake caring responsibilities. Under the Checkpoint program, two streams of assistance will be available to participants: *Stepping Back In* and *Stepping Up*.

Through *Stepping Back In*, carers will be able to access skills and employment assessment services and advice on re-entry into the workforce including suggestions for professional and skills development. Through *Stepping Up*, carers who have recently re-joined the workforce will be able to access advice on advancing or changing their career path.

The pilot will trial the Checkpoint program services and following an evaluation of the pilot, the Checkpoint program will deliver services in all states and territories.

Human rights implications

Table item 396 engages the following human rights:

- **Right to work** – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- **Right to an adequate standard of living** – Article 11(1) of the ICESCR;
- **Right to equality and non-discrimination** – Articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

Right to Work

The Checkpoint program engages the right to work in Article 6 of the ICESCR, which includes the right of everyone to the opportunity to gain their living by work which he freely chooses or accepts. Article 6(2) provides that the steps to be taken by State Parties to achieve the full realisation of this right include providing technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Table item 396 promotes the right to work because the Checkpoint program is designed to increase workforce participation and improve the earning potential of 40,000 Australians who have been out of the workforce attending to caring responsibilities. The Checkpoint program, which, in particular, targets women aged 30 to 45, provides support by way of providing access to skills and employment assessment services, advice on re-entry into the workforce and suggestions about professional and skills development or changing career paths. These measures are intended to support participants back into the workforce and as such, promote the Right to Work.

Right to an Adequate Standard of Living

The Checkpoint program also engages the right to an adequate standard of living in Article 11(1) of the ICESCR, which recognises the right of everyone to an adequate standard of living and for their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The Checkpoint program is designed to increase workforce participation and improve the earning potential of up to 40,000 carers returning to, or recently returned to paid employment. As such, table item 396 promotes the right to an adequate standard of living as it is designed to support people back into the workforce after a period of leave, the flow-on effects of which contribute to ensuring an adequate standard of living.

Right to Equality and Non-Discrimination

Table item 396 also engages the right to equality and non-discrimination set out in Articles 2, 16 and 26 of the (ICCPR) which provides that all persons are equal before the law and shall not be subject to discrimination.

The Checkpoint program is designed to target women aged 30 to 45, supporting them to achieve economic security and to avoid the need to transition to income support. To the extent this is considered to be a limitation on the right, this is just, reasonable and proportionate in the circumstances. Women, particularly in this age bracket are the demographic most likely to take time out of the workforce to be caregivers. Given, the often extended break from the workforce, they are a group most vulnerable to not returning to the workforce and becoming dependent on income support. The Checkpoint program is designed to support and assist women back into the workforce to ensure and accelerate equality between men and women.

Table item 396 is compatible with the right to equity and non-discrimination.

Conclusion

Table item 396 is compatible with human rights.

Table item 397 – Online resources and professional development for mathematics teachers program

Table item 397 establishes legislative authority for government spending on the online resources and professional development for mathematics teachers program (the Online Mathematics program).

The Government will provide funding of \$9.5 million over four years from 2019-20 to enable one or more organisations to deliver online resources and professional development for mathematics teachers. The Online Mathematics program will seek to strengthen the capacity of school teachers across Australia to teach mathematics and numeracy through freely available, nationally coordinated and high quality professional teaching and learning resources.

This initiative will comprise of the following:

- a) the establishment of Mathematics Massive Open Online Courses (Mathematics MOOCs) for school teachers of Foundation to Year 10 students;
- b) face-to-face professional learning for school teachers of Foundation to Year 10 students in support of the Mathematics MOOCs;
- c) a repository of teaching and learning resources through an online Mathematics and Numeracy Hub.

The design and combined delivery of the Mathematics MOOCs and the Mathematics and Numeracy Hub, which will provide open access to free, high-quality, curriculum-aligned resources, will ensure maximum reach and engagement across Australia. This will ensure that school teachers and students from all backgrounds will be able to develop their mathematical and numeracy knowledge, skills and understanding. This includes cohorts that are traditionally under-represented in the Science, Technology, Engineering and Mathematics (STEM) fields, such as girls, students living in rural and remote locations, and Aboriginal and Torres Strait Islander students. This aligns with the *National STEM School Education Strategy 2016-2026*, which identifies the need to improve the capacity of teachers to teach mathematics and numeracy as an area for national action.

Human rights implications

Table item 397 engages the following human right:

- **Right to education** – Article 13 of the ICESCR, and Articles 28 and 29 of the Convention on the Rights of the Child (CRC).

Right to education

Table item 397 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

Article 4 of the CRC provides that State Parties ‘shall undertake all appropriate legislative, administrative and other measures’ for the implementation of the rights recognised in the Convention. These rights include the ‘right of the child to education’ (Article 28).

Further, Article 29(1) of the CRC relevantly provides that ‘States Parties agree that the education of the child shall be directed to ... the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 29(1) underlines an individual and subjective right to a specific quality of education. Education of the quality required by Article 29 can be achieved only if teachers are appropriately trained and have the skills and knowledge needed to deliver quality education. By improving the mathematical knowledge of teachers and ready access to quality mathematics resources, the Online Mathematics program aims to improve the quality of mathematics education provided to children.

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. These rights include the right in Article 13(2) of the ICESCR, which provides that State Parties recognise:

- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

Article 13(2)(b) of the ICESCR is, in part, directed at ensuring that the form and substance of education, including curricula and teaching methods, are acceptable, and at ensuring that education is available and accessible to all.

Consistent with these obligations, table item 397 promotes the right to education by:

- supporting teachers with training and educational resources to strengthen their capacity to teach mathematics to students in schools;
- supporting the participation and engagement of mathematics education of students in schools; and
- assisting teachers to effectively deliver mathematics education to students in schools.

Conclusion

Table item 397 is consistent with the right to education and promotes the right to education under the ICESCR and the CRC.

**Senator the Hon Mathias Cormann
Minister for Finance**